IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 8368 OF 2005 .

Sunita Ashok Bagri ... Petitioner.

V/s.

Mohan H. Karnani & ors. ... Respondents.

Shri Suresh C. Gupte with B.V. Bhagwat i/b Bhaskar & Co.for the petitioner.

Shri Girish Vora for respondent Nos. 1 & 2.

CORAM : V.C.DAGA, J.

DATED : 7.12.2005.

P.C. :

. Heard learned Counsel for the petitioner.

Perused petition and annexures annexed thereto.

2. This petition is directed against the judgment and order dated 29.9.2003 passed by the Division Bench of the Small Causes Court, Bombay, in Appeal No. 553 of 2003 with Cross Objection No. 15 of 2003, confirming the judgment, order and decree passed in RAE & R Suit No. 824/1871 of 1995, on 2.7.2003 direcing delivery of possession of the suit premises/ residential flat.

3. The factual scenario reveals that respondent Nos. 1 and 2 original plaintiffs (the 'plaintiffs' for short) filed a suit against respondent No.1- Century Spinning and Manufacturing Co. Ltd.

('company' for short) and one Shri Ashok K. Bagri (since deceased) (presently represented by his widow as legal heir), contending that the plaintiffs need the premises for their bonafide use and occupation.

4. Factual matrix further reveals that the plaintiffs executed Leave and Licence agreement in favour of the company, who in turn permitted one of its employees; namely, Late Shri Ashok Bagri (original defendant No.2) to occupy the suit premises. Late Shri Ashok Bagri left employment of the company on 1.10.1973. Thus, Shri Bagri was no longer in the employment of the company w.e.f. 1.10.1973. However, it appears that he continued to occupy the suit premises even after ceasing to be the employee of the company. The company has also filed a suit for ejection and also launched criminal prosecution. Both proceedings are pending without much progress.

5. The plaintiffs in this suit for possession contending that the company parted with possession in breach of terms and conditions of the Leave and Licence agreement with further contention that defendant No.2 not being a protected tenant had no independent right to continue to occupy the suit premises. He could not be allowed to claim to be the sub-tenant or tenant in the suit premises.

6. On being summoned, original defendants i.e. the company and Shri Ashok Bagri appeared in the suit and filed their respective written statements.

7. Shri Bagri, original defendant No.2 claimed to be tenant in the suit premises, contending that even after termination of his services by defendant No.1-Company he continued to be the licensee-tenant till 1.2.1973 and on this crucial date he was in occupation of the premises in his own rights. He also disputed the bonafide need of the landlord/plaintiffs.

8. The trial Court framed issues appearing at page 39 of the paper book, wherein, one of the issues was: "Do the plaintiffs prove that the defendant No.1(Company) has unlawfully sublet the suit premises or assigned or transferred in any other manner the interest therein as alleged in the plaint.

9. The trial Court, after considering the evidence brought on record by rival parties, recorded a finding in the affirmative. This finding was confirmed by the appellate Court. Both the Courts below have concurrently held that on 1.2.1973, late Shri Ashok Bagri (original defendant

No.2) was very much in the employment of defendant No.1-Company on 1.2.1993 and, therefore, there was no question of he being in possession of the premises in his own rights as a licensee-tenant as such he did not acquire status of a deemed tenant under section 15A of the Bombay Rent Act.

10. The above finding of fact is based on appreciation of evidence. It was, thus, concluded that once it is held that original defendant No.2-Late Ashok Bagri was not a lawful tenant, in that event, he was not entitled to claim any protection under the provisions of the Bombay Rent Act. This view of the Courts below is based on the law laid down by this Court in the case of C.K. Talwar vs. Ralis India Ltd., AIR 1993 Bom.1 and Dr. Surinder P.S. Pruthi and ors. vs. Commandors B.Y. Wad and ors, 1993(3) Bom.C.R. 371, wherein the Court held that to claim benefit of licensee under section 15-A occupant must ne licensee in his own right. In the said case he was occupying on behalf of the Company and after 1974 when services ended he became a trespasser. At best company could be licensee tenant in 1974 and no rights were left with occupant/plaintiff. The case being not of tenancy Rent Act did not apply.

11. The petitioners tried to challenge the finding and consequent decree for possession in this

writ petition filed under Article 227 of the Constitution of India

12. Having heard rival parties and looking to the evidence and other material on record, it is not possible to hold that concurrent findings of facts recorded by the Courts below are perverse. The original defendant No.2 had no right to claim to be a protected tenant under the Bombay Rent Act. If that be so, it was not open for him to challenge the bonafide need of the landlord- original plaintiffs. Consequently, the present petitioner, widow of Late Shri Ashok Bagri also cannot challenge the bonafide need of the plaintiffs. The findings in this behalf can only be challenged by the Company, who is a tenant under Bombay Rent Act. But Company did not challenge judgment and decree of the trial Court suffered by it.

13. The trial Court while holding that original defendant No.2 cannot be said to be the protected tenant under the Bombay Rent Act went further and held that landlords have proved their bonafide need. This finding, as stated hereinabove, has not been challenged by the original defendant No.1-Company by preferring appeal against the judgment and decree of the trial Court. With the result, the findings recorded against original tenant-defendant No.1 in

this behalf have become final and conclusive.

14. The lower appellate Court in appeal filed by the present petitioner (as legal heir of original defendant No.2) affirmed the findings on both counts; one, holding that the petitioner cannot claim to be statutory tenant having protection of Bombay Rent Act and secondly, that it cannot be said that bonafide need of the landlords has not been established.

15. I see no reason to interfere with the impugned order, especially, in exercise of writ jurisdiction under Article 227 of the Constitution of India. This Court, not being a Court of appeal is not expected to reappreciate evidence and substitute its own views, unless this Court finds that appreciation of evidence and finding recorded are perverse. No such case has been made out. The Supreme Court in the case of Babhutmal Raichand Osawal vs. Laxmibai R. Tarte AIR 1975 SC 1297 observed as under:

> "It is a litigation between landlord and tenant and as is usual it has been fought to a bitter end. Much of the agony to which the tenant has been subjected in this litigation would have been spared if only the High Court had kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under

> Articles 226 and 227 of the Constitution."

It is thus clear that the High Court while exercising jurisdiction under Article 227 cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal. Its function is limited to seeing that the subordinate Court or Tribunal functions with the limits of its authority. Considering the dicta of the Apex Court in this behalf, it is not possible to interfere with the judgment and decree passed by the Courts below. In this view of the matter, petition is devoid of any substance and the same is liable to be dismissed in limine with no order as to costs.

16. At this stage, learned Counsel for the petitioner sought 8 weeks time to approach the Supreme Court. Time as prayed is granted subject to furnishing usual undertaking stating therein that no third party interest shall be created in respect of the suit premises and that the suit premises shall be vacated in the event petitioner in the event she is unsuccessful in the higher Court. Needless to mention that undertaking must be signed by all occupants of the premises and must be filed within 2 weeks from today, failing which it would be open for the decree holder to execute the decree in accordance with law.

(V.C. DAGA,J.)